

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8300

Petition of Entergy Nuclear Vermont Yankee, LLC and)
Entergy Nuclear Operations, Inc., for a certificate of)
public good, pursuant to 30 V.S.A. § 248 and 10 V.S.A.)
§ 6522, authorizing the construction of a second)
independent spent fuel storage installation storage pad)
and related improvements, including installation of a)
new diesel generator with an electrical rating of)
approximately 200 kW, at the Vermont Yankee Nuclear)
Power Station in the Town of Vernon, Vermont)

Order entered: 7/7/2015

ORDER RE: MOTIONS TO INTERVENE

I. INTRODUCTION

On June 30, 2014, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, "Entergy VY") filed a petition for a certificate of public good to authorize the construction of a second independent spent fuel storage pad and related improvements (the "Project").

On August 22, 2014, Windham Regional Commission ("WRC") filed a motion to intervene in this proceeding.

On April 29, 2015, the New England Coalition, Inc. ("NEC") filed a motion to intervene.

On May 6, 2015, following a status conference held on April 29, 2015, the Vermont Public Service Board ("Board") issued a scheduling order. Pursuant to that Order, the deadline for timely motions to intervene was June 11, 2015.

On June 10, 2015, the Town of Vernon, Vermont ("Vernon"), moved to intervene.

On June 18 and 19, 2015, Entergy VY and the Vermont Department of Public Service ("Department") filed responses to Vernon's and NEC's motions to intervene.¹

No other responses to the three intervention motions were received.

1. Neither Entergy VY nor the Department addressed WRC's motion to intervene in their comments.

II. THE STANDARD

PSB Rule 2.209 governs intervention in proceedings before the Board. Rule 2.209(A) provides that upon timely application a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Board the power to grant intervenor status on a permissive basis, when an applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." In exercising the discretionary authority reserved in Rule 2.209, the Board considers three factors:

- (1) whether the applicant's interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant's interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

All of the pending intervention requests are timely inasmuch as they were filed on or before the June 11, 2015, deadline set forth in our Scheduling Order of May 6, 2015.

In addition, Rule 2.209(C) further provides that, in the event a party is granted intervention, the Board:

may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

III. VERNON

Vernon argues that, as the local governmental entity that hosts the Project, it has a substantial interest related to the orderly development of the region, and therefore is entitled to intervene in the proceeding.

In responding to Vernon's motion, the Department states that, although Vernon has identified a valid interest related to the orderly development of the region, it has failed to specify the statutory criteria that it seeks to address in the proceeding and, accordingly, the Department cannot address the scope of Vernon's intervention. Therefore, the Department recommends that the Board require Vernon to identify the specific statutory criteria that relate to Vernon's interest prior to a ruling on Vernon's motion.

Entergy VY states that it has no objection to Vernon's motion to intervene.

The Board finds that Vernon has articulated a substantial interest in the proceeding as it relates to the orderly development of the region. In its comments, the Department creates a distinction between whether Vernon is seeking intervention in order to address the Section 248 (b)(1) criterion or whether "orderly development is merely the basis for the town's substantial interest in the outcome of the proceeding."² Rule 2.209 provides that the Board may limit a party's participation to "those issues in which the party has demonstrated an interest." As Vernon has only asserted an interest in the orderly development criterion, we find that the Department's distinction is immaterial in this instance. Accordingly, we grant Vernon permissive intervention, limited to the interest identified in its motion – that is, the substantive criterion of 30 V.S.A. § 248(b)(1). If Vernon, in fact, seeks intervention on other matters outside of the orderly development criteria, it should refile its motion and justify its interest in those areas.

IV. WRC

WRC argues that as the regional governmental organization that hosts the Project, it has a substantial interest in the orderly development of the region and is therefore entitled to intervene in the proceeding.

2. Response of the Department to the Notice of Appearance and Motion to Intervene of the Town of Vernon and NEC's Petition for Leave to Intervene at 3.

In their comments, neither the Department nor Entergy VY addressed WRC's motion to intervene.

The Board finds that WRC, like Vernon, has demonstrated a substantial interest in the proceeding related to orderly development and therefore grants WEC permissive intervention limited to that interest. If WRC seeks intervention on matters outside of the orderly development criteria, it should refile its motion and justify its interest in those areas.

V. NEC

NEC states that it is a not-for-profit corporation organized for the purpose of advocating for the effective regulation of nuclear steam-electric plants, the environmental protection and stewardship of natural resources around nuclear steam-electric plants, and the development of sustainable energy alternatives to nuclear power. NEC further states that it is composed of members who have homes and businesses in the vicinity of the Project site and who will be directly affected by the proceeding. As such, NEC argues that it has a substantial interest related to the siting and construction of the Project that cannot adequately be represented by the other parties to the proceeding and that its participation will not unduly delay the proceeding or prejudice the existing parties.

The Department argues that although NEC has identified a substantial interest related to the Project, it has not clearly articulated how that interest relates to the applicable criteria of Section 248 that the Board must consider in this proceeding. Accordingly, the Department recommends that the Board require NEC to further clarify how its interest relates to the statutory criteria before it rules on the scope of NEC's intervention and its overall motion.

Entergy VY argues that NEC fails to meet the requirements for either intervention as of right pursuant to Rule 2.209(A) or permissive intervention pursuant to 2.209(B). Specifically, Entergy VY maintains that NEC has failed to articulate a particularized interest in the proceeding. In addition, Entergy VY argues that NEC's interest is adequately protected by both the Department and the Agency of Natural Resources, and that NEC's participation is likely to cause delays in the proceeding due to the addition of extraneous issues outside the scope of the proceeding, particularly those related to the storage of spent nuclear fuel. In the event that the

Board does grant NEC's motion, Entergy VY argues that it should be limited to any substantial interest the Board concludes that NEC has demonstrated.

While Entergy VY correctly observes that NEC's motion discusses a number of issues that are outside the scope of this proceeding (and may be outside the Board's jurisdiction), NEC does not rely on these provisions to establish its interest in the outcome of the proceeding. Instead, NEC states that these issues provide additional context for its concerns related to the Project, and specifically identifies its interest in "the local environment, Vermont Yankee property reuse, regional planning and development, and aesthetics"³ as the principal concerns it seeks to protect. Reviewing these interests individually, we find that NEC has articulated a substantial interest. The Board has previously granted NEC intervention based on interests similar to those that NEC now cites. Accordingly, we are granting NEC permissive intervention limited to the interest it has articulated in the Project's impacts on the local environment, the reuse of the Vermont Yankee property, regional planning and development, and aesthetics. In addition, we remind NEC that this proceeding is not a forum for litigating issues that are within the jurisdiction of the Nuclear Regulatory Commission.

SO ORDERED.

3. NEC Petition for Leave to Intervene at 2.

Dated at Montpelier, Vermont, this 7th day of July, 2015.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/Margaret Cheney</u>)	BOARD
)	
)	OF VERMONT
<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: July 7, 2015

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)